



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/159009

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 11, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a telephonic hearing was held on August 05, 2014.

The issue for determination is whether the agency correctly terminated petitioner's BadgerCare Plus effective August 1, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On or about July 1, 2014 the agency processed petitioner's six month review form and calculated his earned income. His monthly gross income was determined to be \$1153.28.

3. On July 2, 2014 the agency issued petitioner a notice of decision stating that effective August 1, 2014 his BCP would end because he was over the income limit of \$972.50 for a household of one.

### DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. §49.45(23); *BadgerCare Plus Eligibility Handbook (BCPEH)*, §1.1, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. A person is eligible for BadgerCare Plus if s/he meets all BC+ non-financial and financial requirements. The issue in this case is the financial eligibility for petitioner.

The petitioner must pass an income test. As of April 1, 2014 an existing member/childless adult cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. §49.45(23)(a); *BCPEH*, §16.1. The 100% FPL amount is \$972.50 monthly for a household of one. *Id.*, §50.1.

The Department has calculated a gross income amount for the petitioner of \$1153.28, based on the average of his previous 30 days of work and hourly rate. From gross income, the Department is allowed to subtract only those income tax deductions listed on lines #16 - #19 of the federal 1040A tax return, subject to modifications listed at 42 C.F.R. §435.603(e), which provide:

- (1) An amount received as a lump sum is counted as income only in the month received.
- (2) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.
- (3) ***American Indian/Alaska Native exceptions.*** The following are excluded from income:
  - (i) Distributions from Alaska Native Corporations and Settlement Trusts;
  - (ii) Distributions from any property held in trust, subject to Federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior;
  - (iii) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from—
    - (A) Rights of ownership or possession in any lands described in paragraph (e)(3)(ii) of this section; or
    - (B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
  - (iv) Distributions resulting from real property ownership interests related to natural resources and improvements—
    - (A) Located on or near a reservation or within the most recent boundaries of a prior Federal reservation; or
    - (B) Resulting from the exercise of federally-protected rights relating to such real property ownership interests;
  - (v) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom;
  - (vi) Student financial assistance provided under the Bureau of Indian Affairs education programs.

The petitioner did not identify any of these adjusted gross income deductions as being applicable here and there is no evidence to believe they would. There is no exception under law for these circumstances. Rather, the petitioner is just over the income limit.

The petitioner's disagreement with the Department's action here is that the income limit is too low. While I certainly understand his argument, it is an argument based on equity or fairness, and it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the

authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Based on the foregoing, I must find that the agency acted correctly. Petitioner can reapply at any time should his financial situation change, remembering that the agency looks at the last 30 days of earnings. The petitioner has not yet gone to the federal Marketplace website to buy subsidized private insurance. That website is [www.healthcare.gov](http://www.healthcare.gov). Even though the "open enrollment" period ended March 31, 2014, the discontinuance of the petitioner's BCP will trigger a "special enrollment period" for the petitioner for the Marketplace. A special enrollment period runs for 60 days from the end of the petitioner's BCP coverage. 45 C.F.R. § 155.420. Thus, he may still contact the federal Marketplace to obtain information on the types of coverage that may be obtained and cost levels under the federal program.

### **CONCLUSIONS OF LAW**

1. The Department has correctly discontinued the petitioner's BadgerCare due to income in excess of program limits.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of August, 2014

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 11, 2014.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability